

**STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION**

IN THE MATTER OF:)	DIVISION OF WATER
)	POLLUTION CONTROL
)	
TOMMY HOLLINGSWORTH)	
)	
)	
RESPONDENT)	CASE NO. WPC08-0152

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Paul E. Davis, Director of the Tennessee Division of Water Pollution Control, and states:

PARTIES

I.

Paul E. Davis is the duly appointed Director of the Tennessee Division of Water Pollution Control (hereinafter the "division") by the Commissioner of the Tennessee Department of Environment and Conservation (hereinafter the "department").

II.

Tommy Hollingsworth (hereinafter the "Respondent") is the owner/developer of property located off Danville Road in Benton County, Tennessee (hereinafter the "site"). Service of process may be made on the Respondent at 1115 Pleasant Hill Road, Mansfield, Tennessee, 38236.

JURISDICTION

III.

Whenever the commissioner has reason to believe that a violation of Tennessee Code Annotated (T.C.A.) § 69-3-101 et seq., the Water Quality Control Act, (hereinafter the "Act") has occurred, or is about to occur, the commissioner may issue a complaint to the violator, and may order corrective action be taken pursuant to T.C.A. § 69-3-109(a) of the Act. Further, the commissioner has authority to assess civil penalties against any violator of the Act, pursuant to T.C.A. § 69-3-115 of the Act; and has authority to assess damages incurred by the State resulting from the violation, pursuant to T.C.A. § 69-3-116 of the Act. Department rules governing general water quality criteria and use classifications for surface waters have been promulgated pursuant to T.C.A. § 69-3-105 and are effective as the Official Compilation Rules and Regulations of the State of Tennessee, Chapters 1200-4-3 and 1200-4-4 (hereinafter the "Rule"). Pursuant to T.C.A. § 69-3-107(13), the commissioner may delegate to the director any of the powers, duties, and responsibilities of the commissioner under the Act.

IV.

The Respondent is a "person" as defined at T.C.A. § 69-3-103(20) and, as herein described, has violated the Act.

V.

Pursuant to Tennessee Code Annotated § 69-3-108, Rule 1200-4-7-.04 requires a person to submit an application prior to engaging in any activity that requires an Aquatic Resource Alteration Permit (ARAP) that is not governed by a general permit or a § 401 Water Quality Certification. No activity may be authorized unless any lost resource value associated with the proposed impact is offset by mitigation sufficient to result in no overall net loss of resource value.

VI.

The unnamed tributaries to Tennessee River, referred to herein, are “waters of the state” as defined by T.C.A. § 69-3-103(33). Pursuant to T.C.A. § 69-3-105(a)(1), all waters of the state are classified by the Tennessee Water Quality Control Board for suitable uses. Department Rule 1200-4-4, “Use Classifications for Surface Waters” is contained in the *Official Compilation of Rules and Regulations for the State of Tennessee*. Accordingly, these waters are classified for the following uses: fish and aquatic life, recreation, irrigation, and livestock watering and wildlife.

FACTS

VII.

On March 13, 2008, division personnel from the Jackson Environmental Field Office (JEFO) conducted a complaint investigation at the site. It was observed that an impoundment had been constructed across two unnamed tributaries to the Tennessee River. The dam was observed to be unstable with inadequately sized spillways. Sediment and gravel were observed in the unnamed tributaries downstream of the dam.

VIII.

On March 24, 2008, division personnel issued a Notice of Violation (NOV) to the Respondent for the violations noted during the March 13, 2008, complaint investigation. The Respondent was instructed to remove the dam and send in writing the actions that would be taken to complete this task, no later than April 15, 2008.

IX.

On April 8, 2008, division personnel received correspondence from the Respondent stating he had hired a back hoe service to handle the situation.

X.

On April 22, 2008, division personnel conducted a compliance inspection at the site and observed that no action had been taken to correct the site. It was further observed that the dam was eroding and depositing excessive amounts of gravel and sediment downstream into receiving waters.

XI.

On May 5, 2008, division personnel sent correspondence to the Respondent requesting the Respondent to attend a compliance review meeting at the JEFO on May 20, 2008, to discuss the impoundment and the corrective actions needed to bring the site into compliance.

XII.

On May 9, 2008, the Respondent called division personnel stating he would be unable to attend the compliance review meeting scheduled for May 20, 2008, or any subsequent meetings because of his work schedule.

XIII.

During the course of investigating this case, the division has incurred damages in the amount of FIVE HUNDRED SEVENTY-NINE DOLLARS AND SIXTY CENTS (\$579.60).

VIOLATIONS

XIV.

By altering waters of the state without authorization under an ARAP, the Respondent has violated T.C.A. §§ 69-3-108(a)–(b), and 69-3-114(b), which state in part:

§ 69-3-108(a):

Every person who is or is planning to carry on any of the activities outlined in subsection (b), other than a person who discharges into a publicly owned treatment works or who is a domestic discharger into a privately owned treatment works, or who is regulated under a general permit as described in subsection (j), shall file an application for a permit with the commissioner or, when necessary, for modification of such person's existing permit.

§ 69-3-108(b):

It is unlawful for any person, other than a person who discharges into a publicly owned treatment works or a person who is a domestic discharger into a privately owned treatment works, to carry out any of the following activities, except in accordance with the conditions of a valid permit:

(4) The development of a natural resource or the construction, installation, or operation of any establishment or any extension or modification thereof or addition thereto, the operation of which will or is likely to cause an increase in the discharge of wastes into the waters of the state or would otherwise alter the physical, chemical, radiological, biological or bacteriological properties of any waters of the state in any manner not already lawfully authorized;

§ 69-3-114(b):

In addition, it is unlawful for any person to act in a manner or degree which is violative of any provision of this part or of any rule, regulation, or standard of water quality promulgated by the board or of any permits or orders issued pursuant to the provisions of this part; or fail or refuse to file an application for a permit as required in § 69-3-108; or to refuse to furnish, or to falsify any records, information, plans, specifications, or other data required by the board or the Commissioner under this part.

XV.

By causing a condition of pollution in the Tennessee River and its unnamed tributaries, the Respondent has violated T.C.A. § 69-3-114(a).

§ 69-3-114(a) states, in part:

It is unlawful for any person to discharge any substance into waters of the state or to place or cause any substance to be placed in any location where such substances, either by themselves or in combination with others, cause any of the damages as defined in Section 69-3-103 (22), unless such discharge shall be due to an unavoidable accident or unless such action has been properly authorized. Any such action is declared to be a public nuisance.

ORDER

XVI.

WHEREFORE, pursuant to the authority vested by T.C.A. §§ 69-3-107, 69-3-109, 69-3-115, and 69-3-116, I, Paul E. Davis, hereby issue the following ORDER and ASSESSMENT to the Respondent:

1. Within 30 days of receipt of this ORDER AND ASSESSMENT the Respondent shall submit a corrective action plan (CAP) to remove the dam. The CAP shall also include but not limited to the removal of accumulated sediment and gravel from the two unnamed tributaries. The CAP is to be submitted to the manager of the Division of Water Pollution Control located at the Jackson Environmental Field Office (JEFO), 1625 Hollywood Drive, Jackson, Tennessee 38305.
2. Within 30 days of approval of the CAP, the Respondent shall fully complete the CAP and submit written documentation and photographic evidence of completion to the manager of the Division of Water Pollution Control located at the JEFO, and a copy shall also be sent to the manager of the Enforcement & Compliance Section, at the address listed in Item 1, above.
3. The Respondent shall, within 30 days of receipt of this ORDER and ASSESSMENT pay DAMAGES to the division in the amount of FIVE HUNDRED SEVENTY-NINE DOLLARS AND SIXTY CENTS (\$579.60).
4. The Respondent shall pay a CIVIL PENALTY of FIVE THOUSAND DOLLARS (\$5,000.00) to the Department, hereby assessed, to be paid as follows:
 - a. The Respondent shall, within 30 days of receipt of this ORDER, pay a CIVIL PENALTY in the amount of ONE THOUSAND TWO HUNDRED

FIFTY DOLLARS (\$1,250.00).

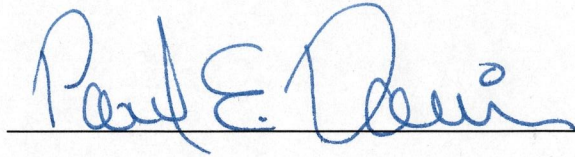
- b. If, and only if, the Respondent fails to comply with item 1 above in a timely manner, the Respondent shall pay ONE THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$1,875.00) to the Division within 30 days of default.
- c. If, and only if, the Respondent fails to comply with item 2 above in a timely manner, the Respondent shall pay ONE THOUSAND EIGHT HUNDRED SEVENTY-FIVE DOLLARS (\$1,875.00) to the Division within 30 days of default.

The Respondent shall otherwise conduct business in accordance with the Act and rules promulgated pursuant to the Act.

The Director of the Division of Water Pollution Control may, for good cause shown, extend the compliance dates contained within this Order and Assessment. In order to be eligible for this time extension, the Respondent shall submit a written request to be received a minimum of 30 days in advance of the compliance date. The request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension will be in writing.

Further, the Respondent is advised that the foregoing Order and Assessment is in no way to be construed as a waiver, expressed or implied, of any provision of the law or regulations. However, compliance with the Order and Assessment will be one factor considered in any decision whether to take enforcement action against the Respondent in the future.

Issued by the Director of the Division of Water Pollution Control on this 16th day
of July, 2008.

A handwritten signature in blue ink, reading "Paul E. Davis", is written over a horizontal line.

PAUL E. DAVIS, P.E.
Director, Division of Water Pollution Control

NOTICE OF RIGHTS

Tennessee Code Annotated §§ 69-3-109, 115, allow the Respondent to secure review (appeal) of this Order and Assessment. To do so, a written petition setting forth the grounds (reasons) for requesting a hearing before the Water Quality Control Board must be RECEIVED by the Department within THIRTY (30) DAYS of the date the Respondent received this Order and Assessment or it will become final (not subject to review).

Artificial Respondents (corporations, limited partnerships, limited liability companies, etc.) cannot carry-on the practice of law. They may secure review (appeal) before the Water Quality Control Board only through an attorney licensed to practice law in Tennessee. Natural Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at no cost or reduced cost through a local bar association or legal aid organization.

Any hearing of this case before the Board will be a contested case hearing governed by T.C.A. § 4-5-301 *et seq.* (the Uniform Administrative Procedures Act) and the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies. Such hearings are in the nature of a trial before the Board

sitting with an Administrative Law Judge. The Respondent may subpoena witnesses to testify.

At the conclusion of a hearing the Board has the authority to affirm, modify, or deny the Order and Assessment. This includes the authority to modify the penalty within the statutory confines (up to \$10,000.00 per day per violation). Furthermore, the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of an administrative law judge and a court reporter.

Any petition to appeal which is filed should be sent to: Appeal of an Enforcement Order, TDEC-OGC, 20th Floor L & C Tower, 401 Church Street, Nashville, TN 37243-1548. Payments of the civil penalty shall be made payable to the "Treasurer, State of Tennessee," and sent to the Division of Fiscal Services - Consolidated Fees Section, Tennessee Department of Environment and Conservation, 14th Floor L&C Tower, 401 Church Street, Nashville, Tennessee 37243. All other correspondence shall be sent to Paul E. Davis, Director, Division of Water Pollution Control, Tennessee Department of Environment and Conservation, 6th Floor Annex, 401 Church Street, Nashville, TN 37243. The case number should be written on all correspondence regarding this matter.